

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A

Opinions of the Courts Below

The opinion of the Circuit Court of Appeals is not yet reported but appears in the record at pages 33 to 41, inclusive. The opinion of the United States District Court for the District of New Hampshire is reported in 33 Federal Supplement 842 and appears in the record at pages 14 to 23, inclusive.

B

Jurisdiction

1. *Timeliness*

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code [28 USCA 347 (a)].

The judgment of the United States Circuit Court of Appeals was entered of record on the 17th day of February, 1941. (R. 41)

The petition for writ of certiorari is filed herein before the expiration of three months from the date of the decree and judgment of the United States Circuit Court of Appeals.

2. *The Statute.*

The validity of state legislation under the United States Constitution was drawn into question in this case and the decision of the United States Circuit Court of Appeals was wrongfully in favor of its validity. The legislation challenged here is an ordinance of the City of Manchester, New Hampshire, which is known as Chapter 39, entitled "Newsboys and Bootblacks".

The entire ordinance appears herein at pages 2-3, supra, and also in the Record at pages 7, 8, 15, 34 and 35.

In holding that the ordinance is not unconstitutional, because it abridges freedom of speech, press and assembly, in violation of the Federal Constitution's Fourteenth Amendment, the United States Circuit Court of Appeals held that the ordinance properly applied to the activity of petitioners and decided in favor of its validity on its face and as so applied. (R. 33-41)

Petitioners alleged in the trial court that said ordinance on its face and as applied was invalid because it deprived them of their rights secured by the Federal Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention to the Federal Constitution's Fourteenth Amendment was thus drawn in question. The judgment of the trial court was against the validity of such ordinance but the judgment of the Circuit Court of Appeals was wrongfully in favor of its validity.

C

Statement of the Case

A full statement of the case has been given herein (supra, pages 2 to 5) and for sake of brevity will not be repeated but is here referred to.

D

Specification of Errors

Petitioners assign the following errors in the record and proceedings of said case:

The Circuit Court of Appeals committed fundamental error in reversing the judgment of the trial court and holding that the petitioners' complaint for an injunction restraining the enforcement of the ordinance should be dismissed because

1) the ordinance in question is void upon its face in that it is vague and indefinite, unlawfully vests arbitrary and discriminatory powers of prior censorship of press, without limit or guide, and unlawfully denies petitioners of their right of freedom of press, contrary to the Federal Constitution's Fourteenth Amendment; and

2) the ordinance in question as construed and applied by respondents is invalid in that, as so construed, it deprives petitioners of their right of freedom of speech, press, conscience and of worship of Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Federal Constitution's Fourteenth Amendment; and

3) the facts as alleged and as found by the trial court showed a lack of adequate remedy at law and that petitioners would suffer irreparable injury, all to warrant the proper granting of the injunction by the trial court restraining future criminal proceedings against petitioners and other of Jehovah's witnesses under said unconstitutional ordinance.

And for these reasons it is reversible error for the United States Circuit Court of Appeals to set aside the judgment of the trial court declaring the ordinance to be unconstitutional and enjoining its enforcement as to peti-

tioners and other of Jehovah's witnesses. The Circuit Court of Appeals errs in holding that the ordinance as applied was a proper and valid exercise of the police power.

PRELIMINARY ARGUMENT

It is to be noted that the opinion, in addition to being extremely unsound and a radical departure from the applicable decisions of this court, is in direct conflict with an opinion rendered in *Herder* v. *Shahadi,* Recorder and City of Atlantic City, reported in 14 Atlantic (2nd) 475. In that case the ordinance in question is identical in its terms with the ordinance here in question. Text of the ordinance involved in the *Herder* v. *Shahadi* case, supra, is set forth in Appendix A. There, in July 1940, the Supreme Court of New Jersey said concerning that ordinance:

> "... Such an indefinite and covert control over the distribution of information and argument is, we believe, pernicious and wholly at variance with constitutional provisions as interpreted by recent and controlling court opinions in both state and nation. This case involves a novel element in that it is *flatly upon a sale* rather than upon gratuitous distribution or distribution in the hope of or with a simple request for a contribution; but on the issues of the instant litigation we think that this difference from the facts of the decided cases does not create a distinction in the applicable principles [citing Lovell v. Griffin, supra, Schneider v. Town of Irvington, supra, Hague v. C. I. O. et al., supra and others]."

ARGUMENT

ONE

The ordinance in question is void upon its face in that it is vague and indefinite, unlawfully vests arbitrary and discriminatory powers of prior censorship of press, without limit or guide, and thus unlawfully denies petitioners their right of freedom of press contrary to the Federal Constitution's Fourteenth Amendment.

The pernicious doctrine that constitutionally secured "free press" extends only to "*free* distribution" (or "gift") of literature is a new theory that the court below has recently grafted onto constitutional law. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against ordinances such as this if he gave away printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as each petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free

press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money for the literature is only incidental to the main activity of petitioners. It is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

In the case of *Cantwell* v. *Connecticut,* supra, the Connecticut Supreme Court of Errors attempted to distinguish the conviction under the solicitation statute on the grounds that 'it was the soliciting contributions' that brought them within the terms of the statute, "and not their more predominant activity of distributing literature." That doctrine was rejected by this court. The opinion in the instant case is also contrary to *Schneider* v. *Irvington,* supra, where the undisputed evidence showed that one of Jehovah's witnesses received money contributions for books and was prosecuted under the ordinance "because she canvassed without a permit".

Here the trial court was of the opinion that the Manchester ordinance in question was void because of *Lovell* v. *Griffin,* supra, and held "it so closely resembles the case before me that I cannot ignore it", and accordingly declared the ordinance to be unconstitutional and granted the injunction. The attempt on the part of the Circuit Court of Appeals to justify its contrary holding through a hypercritical distinction of the above cases from the Manchester ordinance has resulted in declaring a dangerous doctrine.

The Circuit Court of Appeals held that the ordinance did not permit arbitrary and discriminatory "prior censorship or license" of the press but was purely a regulatory ordinance. The court below based this conclusion on the fact that the ordinance required "a badge" instead of "a permit" as a condition precedent to the exercise of the right of distributing literature AND *receiving money therefor.* The ordinance prohibits *selling* of newspapers, books, pamphlets, or magazines unless there has been previously issued

a badge to the person so exercising his right of *free press*. To secure the badge one must file an application in writing showing name and age and must also pay a fee of 50 cents, to be returned upon surrender of the badge. To secure and retain such badge the applicant is required by the ordinance to conform to all the laws of New Hampshire, to all the ordinances of the City of Manchester and to all the regulations of the board of mayor and aldermen. The ordinance provides that he shall surrender his badge when notified by the superintendent that his license has been revoked, which can be revoked without reason. The badge must be worn at all times so as to be conspicuously in sight of others.

It is admitted that the petitioners were above the age limit of 14 provided in such ordinance.

The point to be kept in mind is that one cannot engage in press activity under the ordinance here until he has filed the application with the authorities and received the badge. The required submission to the authorities before one can exercise such right is prior censorship condemned by this Court. The ordinance does not have to *expressly* confer the right of censorship upon an individual as to the kind of literature to be distributed to amount to *prior censorship* within the meaning of the cases of this court on the subject. This court condemns prior license. It is to be noticed that the ordinance in the *Lovell* case did not prescribe any terms of censorship of literature. It prohibited press activity unless the person so acting had a permit. The ordinance here prohibits press activity unless the person has a badge. We see no difference between a law requiring a badge and a law requiring a permit; *they are one and the same thing*. The Circuit Court of Appeals admits that the ordinance is a burden upon the freedom of the press but says that such ordinance "imposes no *substantial* burden upon the freedom of the press". We submit that any burden is unlawful whether it is substantial or unsubstantial.

The ordinance requires the payment of a *nominal* fee

for the badge. Suppose a person was too poor and financially unable to provide the fifty cents; if the law is sustained, such poor person would be unable to exercise his fundamental personal right or undergo the peril of criminal prosecution if he exercised his press activity without such a permit or badge. We submit that if the "*nominal* fee" provision makes the ordinance valid, then it would be possible for another city to pass an ordinance and require the payment of a higher "nominal" fee, and *so on* increases would be authorized until a prohibitive fee could be legally charged for such a badge of "identification", and thus free press prohibited.

The holding of the Circuit Court of Appeals is clearly contrary to the holding of this court in the cases of *Grosjean* v. *American Press Company,* 297 U. S. 242; *Near* v. *Minnesota,* 283 U. S. 697, 707; and *Gitlow* v. *New York,* 268 U. S. 652, 666.

The Circuit Court of Appeals held that the ordinance did not confer any discretion to grant or withhold the license or badge upon receipt of proper application; but that it conferred the simple duty to issue the badge upon the receipt of the application. We submit that it does confer discretion upon the superintendent. What about the provision of the ordinance which gives the superintendent the right to revoke the badge? also the provision requiring the applicant at all times to comply with the laws of the state and city and all the rules of the mayor and aldermen? This is certainly a plain and clear vesting of discretion in the superintendent to determine whether or not such laws or regulations have been or will be complied with by applicant. He has the power to revoke or refuse a license without limitation. The Circuit Court of Appeals then follows its statement "no discretion is conferred by the ordinance" with a discussion, which to us appears to be directly inconsistent and which plainly indicates the invalidity of the ordinance. The court said:

"No doubt, as in the case of any regulatory law, there is the possibility (though the record indicates no likelihood of it) that officials might act arbitrarily and in excess of their rightful powers in administering the ordinance. The superintendent of schools might arbitrarily withhold licenses from Jehovah's witnesses, despite his mandatory duty to issue the badges upon receipt of applications 'properly executed'. A license once given might be revoked upon some trumped-up pretext. By Section 3, the badgeholder is required to conform to the ordinances of the city and the regulations of the board of mayor and aldermen; some outrageous regulation might be issued; and for non-compliance with it a license might be revoked under Section 4. What the legal situation would be if any of these or other possibilities came to pass need not be examined now."

This ordinance is likened by the Circuit Court of Appeals to the right of a municipality to require a stranger to establish his identity and authority before soliciting. There is no such analogy. Petitioners are resident citizens of Manchester, not "strangers". The ordinance is not aimed at begging or soliciting. It is aimed at selling magazines or literature by everyone. Any person, whether local resident or a "stranger", has the right to SELL magazines and literature expressing opinion and the city has no right to interfere therewith by requiring such persons to get permits or to register with the city for any purpose.

Assuming, for the purpose of argument only, that the ordinance is only "regulatory", then we still submit that it is entirely beyond the province of the police power to require "identification" of persons exercising "press activity". It is entirely beyond the reach of the police power to require that identification be issued by municipality to persons desiring to follow their calling to "press activity" and of worship of Almighty God.

There must be some reasonable relation between the means employed and the evils at which the law is aimed. *Police Power,* Freund. There is no such reasonable relation or connection here.

Whatever may have been the motive in the passage of the ordinance, it strikes at the foundation of free press. Frauds, trespasses and injury can be prohibited by laws covering same, and the motive back of this ordinance to prevent such "frauds" does not save it. (*Schneider* v. *State,* supra; *Cantwell* v. *Connecticut,* supra) If the argument of the court below can be sustained, then it can be extended further in other situations to a ridiculous end; i. e., burglary can be punished and prohibited by law, and is properly so prohibited in every state. If the argument of the court below be accepted, then a law which required every person to remain in his home after dark or not leave without permit from the police could also be sustained because the motive or aim is to prevent night burglaries—but, fortunately, it is not the motive or aim back of the law that saves the law, but it is the terms thereof and the application given that determine its validity.

It is argued that any abuse of authority conferred upon the superintendent by the ordinance can be corrected by taking the matter into the state courts. Such an argument is answered in the case of *Cantwell* v. *Connecticut,* supra.[1] That argument by the United States Circuit Court of Appeals in its Opinion concerning the possibilities of un-

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[1] "It is suggested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

"To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty

fair action by the superintendent calls to mind our contention that the ordinance is void because it vests in the superintendent arbitrary and discriminatory powers, otherwise known as prior censorship.

It is a fundamental proposition of law that any statute or ordinance which attempts to license individuals in business is unconstitutional if the same fails to lay down a rule governing the terms whereby a permit may or may not be granted.

The ordinance in question here fails to prescribe such rule. It fails to limit the discretion of the licensing authority (or official), and thus permits said administrative agent to act indiscriminately and to discriminate and arbitrarily grant or refuse a permit. Such ordinances have been outlawed by this Court. See the case of *Yick Wo* v. *Hopkins*, supra, from which we quote, as follows:

> "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while

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on the secretary of the welfare council. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action."

sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be government of laws and not of men'. For the very idea that one man may be compelled to hold his life, or the means of living, *or any material right,* essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

See also *Hague* v. *C. I. O. et al.,* supra, *Connally* v. *General Construction Co.,* 269 U. S. 385; *Herndon* v. *Lowry,* 301 U. S. 242; *United States* v. *Cohen Grocery Co.,* 255 U. S. 81; *Stromberg* v. *California,* 283 U. S. 359; *Lanzetta* v. *State,* 306 U. S. 451; *Cline* v. *Frink Dairy Co.,* 274 U. S. 445; *International Harvester Co. of America* v. *Commonwealth of Kentucky,* 234 U. S. 634, 638; 234 U. S. 216; *Smith* v. *Cahoon,* 283 U. S. 564; *Small Co.* v. *American Sugar Refining Co.,* 267 U. S. 233; *Lovell* v. *Griffin,* supra.

The cases last cited also hold that a vague and indefinite

ordinance or statute also violates the *due process* clause of the Federal Constitution's Fourteenth Amendment. We also contend that the ordinance in question is objectionable for this reason also. Here we point out that the statute says that the applicant must conform to all the "regulations of the mayor and aldermen". Such requirement to conform to such regulations is a vague and indefinite term and enables the court, jury and superintendent all to speculate as to just what such requirements are. Such an ordinance is for and on account of such a dragnet and indefinite provision.

Since the ordinance is void on its face, it was wholly unnecessary that petitioners apply for a permit under the same as a condition precedent to the challenging of the validity of the same. *Lovell* v. *Griffin,* supra.

It was proper for the trial court to enjoin the enforcement of the entire ordinance against everyone. The ordinance is void on its face. Since it is so void, being a criminal statute, it must be strictly construed and if any part of the statute or ordinance is void and unconstitutional, then the entire ordinance is "thrown out" and can be properly enjoined as to everyone.

However, if it be contended that the decree of the trial court is too broad, then we submit that such broadness in scope is not grounds for a reversal of the decree, but only modification. The proper step for the Circuit Court of Appeals to have taken, if that court thought the decree too broad, would be to have modified the decree and limited its application to the petitioners and those for whom petitioners sue.

We submit for the reasons discussed under Point One, the judgment of the Circuit Court of Appeals should be reversed and the judgment of the trial court affirmed or in the alternative modified.

TWO

The ordinance in question, as construed and applied by respondents, is invalid in that, as so construed, it deprives petitioners of their right of freedom of speech, press, and conscience and of worship of Almighty God, as commanded by Him in the Bible, contrary to the due process clause of the Federal Constitution's Fourteenth Amendment.

The undisputed evidence shows that the right which petitioners exercise is that of worshiping Almighty God by acting as ordained ministers in preaching the Gospel and also press activity, and the action of the Manchester authorities in arresting and prosecuting them is in excess of their lawful authority; and it is the unconstitutional application of said ordinance to petitioners' activities that invalidates it.

It will be recalled that in the case of *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545, the court said:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

It has long been the well-settled rule of this court that a statute may be invalid as applied to one set of facts, and yet valid as applied to another, and in many instances this court has refused to declare a statute void on its face, but at the same time the court has held that such a statute was void and unconstitutional *as construed and applied.* See

Dahnke-Walker Milling Co. v. Bondurant,
257 U. S. 282

Poindexter v. Grunhow,
114 U. S. 270

St. Louis I. M. & S. Ry. Co. v. Wynne,
224 U. S. 354

Kansas City Sou. Ry. Co. v. Anderson,
233 U. S. 325

Whitney v. California,
274 U. S. 357

Village of South Holland v. Mrs. Paul Stein,
373 Ill. 472; 26 N. E. (2) 868

The principle that one is entitled to an injunction to restrain the enforcement of criminal statutes is not limited to statutes unconstitutional and void on their face but extends also to permit injunctions to restrain the enforcement of constitutional statutes unconstitutionally applied and unconstitutional acts of officials in excess of their authority acting under such statutes. *Sterling* v. *Constantin,* 287 U. S. 393 (378); *Greene* v. *Louisville & Interurban Railroad Co.,* 244 U. S. 499, 506-508; *Lee* v. *Bickwell,* 292 U. S. 415; *Fidelity Deposit Co.* v. *Tafoya,* 270 U. S. 426.

The petitioners are ordained ministers of the Gospel of God's Kingdom or Theocracy, which is a righteous government that will be fully established in the earth very shortly. They possess credentials showing their ordination. (R. 27, Exhibit 3) They have entered into a covenant or agreement with Almighty God as provided in Isaiah 61: 1, 2 and other scriptures to do the will of Almighty God, which is to preach or proclaim the judgments of Almighty God and His message of hope recorded in the Bible, to all people of good-will toward Almighty God. In order to enable such persons to flee from the Devil's organization to The Theocracy, and thus receive everlasting life under such righteous government which will bring peace, prosper-

ity and happiness to all who survive the battle of Armageddon—near at hand—Jehovah's witnesses preach the gospel publicly throughout the land. To enable the petitioners to effectively thus preach the gospel 'publicly and throughout every city until the cities are desolate' (Isaiah 6:11) the petitioners use books, booklets, magazines and pamphlets which contain the entire message. This literature they employ as a substitute for talking, or sermons, and which is more effective because it can be studied by the recipients in the quiet of the home. Thus much time is saved and more people are reached. The literature is admittedly an attack upon the "religion principles" of the various worldly religions as practiced today and shows the clear distinction between CHRISTIANITY, which means joyfully and willingly obeying all the laws of Almighty God, and religion, which is the doing of anything contrary to the will and law of Almighty God. It is not an attack against individuals or persons.

In thus acting, the petitioners are duly ordained ministers of the Gospel of Jehovah God's Kingdom. It cannot be properly said that such conduct does not constitute a proper worship or service of Almighty God. The trial court found that such conduct amounted to preaching the Gospel and that in thus acting each acted as an ordained minister of Almighty God. This finding is conclusive upon all concerned in this matter. Furthermore this court has held that the individual alone is privileged to determine what he shall or shall not believe and how he shall exercise his right of conscience in performing such belief. The law of this land does not attempt to settle differences of creed and confession, and will not say that any point, doctrine or practice is too absurd to be believed.[2]

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[2] *Reynolds* v. *United States,* 98 U. S. 145, 162, quoting from Jefferson's Virginia Statute of Religious Freedom; also, *United States* v. *Macintosh,* 283 U. S. 605, 634.

If the practice or belief does not involve a violation of the law of morals, invade the right of property, and imperil, by clear and present danger, the safety of the nation and state, then such cannot be interfered with by any kind or character of statute, whether valid or invalid. Being bound by the conclusion that petitioners are ministers, what is next presented?

Attention of this court is kindly drawn to the case of *Thomas* v. *City of Atlanta,* 59 Ga App 520, 1 S E (2) 592, where one of Jehovah's witnesses was convicted under an ordinance prohibiting peddling without a license. In reversing the conviction, the Georgia Court of Appeals said:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and teach his religion."

To the same effect is *Village of South Holland* v. *Mrs. Paul Stein,* supra, *Semansky* v. *Stark* (La., Nov. 4, 1940), 199 So. 129, *Cincinnati* v. *Mosier,* 61 Ohio App. 81, *Schneider* v. *State,* supra, *Cantwell* v. *Connecticut,* supra.

The City of Manchester has no more authority to require petitioners, Jehovah's witnesses, to register with the superintendent and get a badge than it would to require the religious priests, religious clergy and religious rabbis

of Manchester to get badges as a condition precedent to giving their sermons and conducting their different religions in the City. It is clearly apparent that such an ordinance cannot be applied so as to interfere with or deprive the petitioners of their right of worship. This is petitioners' way of worship and it cannot be denied because none of the exceptions can be found to exist which would warrant the denial of such right.

The *way* of worshiping Almighty God as done by the petitioners in this case is commanded by the written law of Almighty God. God's law is supreme. This rule is recognized by Blackstone in his *Commentaries* (Chase 3d ed., pp. 5-7). See also Cooley's *Constitutional Limitations,* 8th ed., p. 968. Petitioners greatly desire to have life and to live, and therefore each of them must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law. (John 17:3) Petitioners stand in the same position as Jesus Christ's apostles did when haled before magistrates and requested to discontinue their preaching the gospel from house to house, as they did at the time of their arrest; and when ordered to desist, they told the court, "We ought to obey God rather than men." (Acts 5:17-42) Thereafter as it is written concerning them, "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ."—Acts 5:42.

Should the petitioners cease to proclaim the written judgments of Almighty God by yielding to threats of police officials or for any other reason, they would violate the agreement previously made by each of them to obey the law of Almighty God, who commands such proclamation to be made now, irrespective of persecution; and each petitioner would thereby subject himself to everlasting destruction, as he verily believes. See Ezekiel 33:8, 9; Acts 3:22, 23.

The state cannot regulate or censor worship of Almighty God by requiring a permit or badge or license as a condi-

tion precedent thereto to publicly preaching by means of distributing on the streets literature explaining the Bible.

The Circuit Court of Appeals entirely overlooked that the wrongful application of the statute is what makes it unconstitutional. That court said:

> "The civil authority can never concede the extreme claim that police regulations of general application not directed against any sect or creed—however widely the regulations may be accepted as being reasonable and proper—are constitutionally inapplicable to persons who sincerely believe the observance of them to be 'an insult to Almighty God.' See Cardozo, J., in *Hamilton* v. *Regents,* 293 U. S. 245, 268."

The petitioners refused to apply for a permit because they were ordained ministers of Almighty God, preaching the Gospel, and did not come within provisions of it, and furthermore they chose to follow in the footsteps of their Master, Christ Jesus, and His apostles, who preached "publicly and from house to house" and who steadfastly refused to get "permits" from the "state" of their day, and refused to discontinue preaching when requested by the state to discontinue.

It would be an insult to Almighty God to apply to some man of the world, which is ruled over by Satan, for a permit to do that which God has *commanded* to be done at the pain of everlasting death for refusal or failure on the part of Jehovah's witnesses to so preach, as He has plainly commanded.

Here obligations to God and State conflict and one must yield. Blackstone and Cooley, law writers on the subject, (supra, page 28) say that any law that is in conflict with God's law is of no force and effect and that the law of man must yield when in conflict with God's law, which requires all courts to recognize the law of Almighty God as Supreme. There has never been a dissenting voice on this particular matter from their time to the present until

Judge Magruder overruled the two distinguished gentlemen by *grafting* a new theory onto constitutional law. That distinguished judge of the court below privately interpreted the language of the Lord Jesus, 'Render unto Caesar the things which are Caesar's, and unto God the things which are God's,' to mean that a servant of Almighty God can be required to violate his conscience and submit to the will of the State and obtain a permit to do that which Almighty God *commands* to be done. Such private misinterpretation of the Scriptures is not approved by the word of God, as Peter, the apostle of Jesus, said that "no prophecy of the scripture is of any private interpretation". (2 Peter 1:20)

By recording the course of action of His faithful servants, at Hebrews eleven, and other places in the Bible, Almighty God has made manifest the true construction of the above words of Jesus (at Matthew 22:21) to all persons of good-will towards God for their guidance and protection. The rule followed by all sincere and true followers of Christ is that they willingly and joyfully obey *all of the laws of the land* which are not in conflict with the law of Almighty God. The requirement of a permit or license from a servant of Almighty God to thus preach by disseminating printed information is in conflict with God's law and commandment, as well as with the Federal Constitution.

We submit that the petitioners' testimony to the effect that this was their *way* of worship is conclusive upon all connected with the prosecution of this case and cannot be denied by anyone; and since it is their right to worship in that *way,* under the Constitution, to so construe and apply the ordinance would deprive them of this right and thus make the ordinance violative of this court's construction of the Federal Constitution's Fourteenth Amendment, Section 1. For this reason, to permit future prosecutions under the law would mean to deprive the petitioners of their right of freedom to worship Almighty God and also their freedom of speech and of press, and to violate the Constitution.

THREE

The facts as alleged and as found by the trial court showed a lack of adequate remedy at law and that petitioners would suffer irreparable injury, all to warrant the proper granting of the injunction by the trial court restraining future criminal proceedings against petitioners and other of Jehovah's witnesses under said unconstitutional ordinance.

As a general proposition federal courts have no power to enjoin state criminal proceedings or threatened arrests and prosecutions or to prohibit enforcement of an unconstitutional criminal law. However, there is an exception recognized and applied in scores of cases by such courts. That is, where the constitutional rights of the citizen, both civil and property, are being invaded by an unconstitutional statute, or by unconstitutional application of a statute constitutional on its face by officers in excess of authority, and it is shown that there is a danger or irreparable loss from prosecution under such state law, the federal courts may enjoin to protect the complainant's civil rights.

Hague v. C. I. O.
supra

Ex parte Young,
209 U. S. 123

Cline v. Frink Dairy Co.,
supra

Truax v. Raich,
239 U. S. 33

American Jurisprudence, Vol. 28,
page 419, par. 237

This right is also granted under Section 24 (14) of the Judicial Code, and Section 1 of the Civil Rights Act of April 20, 1871 (17 Stat. 13), in cases involving civil rights.

It is, of course, a fundamental proposition of law that where there is a clear, sufficient and adequate remedy at law, the plaintiff in an equitable action is not entitled to equitable relief. However, before such a principle can be applied in the federal courts, it must be made clearly to appear that the plaintiff has in the federal courts (not in the state courts) a plain, clear, sufficient and adequate remedy at law that will be as prompt and efficient as the equitable relief which he seeks in the federal courts; and the fact that he has a right to defend criminal proceedings and appeal from criminal proceedings in the state court does not interfere with such a right to injunction. See

Smyth v. Ames,
169 U. S. 466

New Hampshire Gas & Elec. Co. v. Morse,
42 F. (2) 90-93

Terrace v. Thompson,
263 U. S. 197

American Life Ins. Co. v. Stewart,
300 U. S. 203, 214, 216

Railroad & Warehouse Comm. of Minn. et al. v. Duluth Street Railway Co.,
273 U. S. 625, 628

The petitioners alleged and proved that they would be denied their property rights, continuously arrested and frustrated in their right of press activity, and thus would suffer irreparable injury, and had no adequate remedy at law. (R. 10, 11, 28-30)

Furthermore the trial court found that sufficient facts existed warranting equitable relief in the way of injunction

in this case. The Circuit Court of Appeals and the respondents did not question such findings of the court. The only thing that they contended was that the ordinance was constitutional and for that reason alone could not be enjoined.

In connection with this matter, we should like to call attention to case of *Hague* v. *C. I. O.,* supra.

In a case directly in point here, *Dearborn Publishing Co.* v. *Fitzgerald,* 271 F. 479, the Circuit Court sustained a petition for injunction in favor of the Dearborn Publishing Company, against the acts of the Mayor and other officials of the City of Cleveland, Ohio, who were prohibiting the sale of the *Dearborn Independent* and other Henry Ford publications on the streets of Cleveland. The articles contained a vicious and scurrilous attack upon the Jewish race. Because of the friction and the difficulty between those of the Jewish race and their sympathizers with the distributors of the newspapers and literature, the city officials resorted to the statute and ordinance which prohibited distribution of literature in Cleveland which might tend to or cause a breach of the peace as a basis for arrest of the magazine distributors. In that case distributors were threatened with arrests under such statute all of which frustrated their rights and business. The United States District Court granted the injunction and the case was affirmed. In that case the court said:

> "Defendant's action, however, prevents other sales from time to time and from week to week. This is a continuing course of conduct, and, if not supported by a valid constitutional law or is in excess of authority conferred on them by any valid law or ordinance, becomes a continuing and repeated wrong. In this situation a court of equity has from time immemorial granted relief upon two well established principles: one is for the multiplicity of actions which would be necessary to redress a continuing and repeated wrong;

the other is the irreparable nature of the injury inflicted, in that the damage is not susceptible of accurate ascertainment at law."

Petitioners are burdened with heavy expense, repeated arrests, loss of placements of literature and civil rights, as a result of said arrests, and none of them can find adequate protection in defense of criminal actions brought in the state courts. See Record pages 26-30, 14-22. The respondents admit that they will continue to arrest and prosecute petitioners and all other of Jehovah's witnesses found distributing the literature on the streets and taking contributions therefor. This will frustrate and destroy petitioners' lawful activity unless stopped by affirming the trial court's judgment and decree.

CONCLUSION

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted and this Court should review the decision of the United States Circuit Court of Appeals for the First Circuit.

Confidently submitted,

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